

Washington Citizens' Commission on Salaries for Elected Officials

Official Position Description Form for Executive Branch Positions

Name: **Rob McKenna**

Position Title: **Attorney General**

1. Position Objective

Briefly describe the overall purpose of this position and what is intended to be accomplished through your effort(s). This section should be broadly focused and summarized in two to four sentences.

The purpose of the position of the Attorney General, under the state constitution, is to serve as legal advisor to state officers, including other elected officials, in all legal and quasi-legal matters. Advice and representation are provided to all state agencies by the Attorney General, both directly and through assistant attorneys general who report to the Attorney General. The Attorney General has additional statutory responsibilities directly related to protecting the public against unfair methods of competition, unfair or deceptive acts, and monopolization in the conduct of trade or commerce. Other statutory responsibilities are described below.

2. Financial Dimensions

- a. **Number of employees in your organization: 1130 (appropriated level); 1287 (through interagency agreements)**
- b. **Your annual budget*: FY 07: \$108,543,000 (\$131,513,000 with interagency agreements) (This encompasses all fund sources: general fund state, federal public safety education account, antitrust revolving, new motor vehicle arbitration, legal services revolving, and tobacco prevention.)**
- c. **Other annualized dollar amounts your job controls or influences:**

_____	\$ _____
(item)	(amount)
_____	\$ _____
(item)	(amount)
_____	\$ _____
(item)	(amount)

*Direct control budget – salaries, benefits, etc., of organization staff plus other items under direct control.

3. Principal Responsibilities

List in a series of brief factual statements*, starting with the most important, the accountabilities of your position. Each statement should be a complete sentence describing a single basic end result your job is expected to accomplish. Typically, eight to ten responsibilities are listed, but there is no limit.

In order to support and further the mission of the state and to protect its citizens, revenue and the public trust:

- **Represent the state and over 230 agencies, departments, boards, commissions and their officials in the courts and before administrative tribunals in all legal or quasi-legal matters, hearings and proceedings, and advise them in all matters involving legal or quasi-legal questions. Appear for and represent the state before the Supreme Court and the Court of Appeals in all cases in which the state is interested;**
- **Defend all actions and proceedings against any state officer or employee acting in his or her official capacity, in any of the courts of this state and the United States;**
- **Consult with and advise the Governor, members of the Legislature, and other state officers and, when requested, give written opinions upon all constitutional or legal questions relating to the duties and powers of such officers;**
- **Consult with and advise prosecuting attorneys in matters relating to the duties of their office and, when the interests of the state require, attend trials and assist in prosecutions;**
- **Institute and prosecute all actions and proceedings for the state which may be necessary in the execution of the duties of any state officer;**
- **Enforce the proper application of funds appropriated for the public institutions of the state, and prosecute corporations for failure or refusal to make the reports required by law;**
- **Direct prosecutions in the name of the state for all official delinquencies in relation to the assessment, collection, and payment of revenue against all debtors for the state; and**
- **Prepare proper drafts of contracts and other instruments relating to subjects in which the state is interested.**

Washington Citizens' Commission on Salaries for Elected Officials

Official Position Description Form for Executive Branch Positions

Page 3

*Note: Accountabilities are duty statements written in terms of end results expected and degree of answerability for consequences of results.

4. **Knowledge and Skills**

This section should include a brief statement(s) indicating the knowledge and skills required of the position to perform the full scope of job responsibilities.

a. Education:

The Attorney General must be licensed to practice before the Washington State Supreme Court. No other statewide elected official or agency director is required to be similarly licensed. In order to be eligible to practice law in Washington one must have graduated from an accredited law school (juris doctorate degree), obtained reciprocity from the Washington State Bar by virtue of having been licensed in another state, or be qualified to sit for the bar pursuant to the state Bar's law clerk program under Admission to Practice Rule 6. The vast majority of lawyers, including the current Attorney General, have qualified by the first means.

b. Experience, including management experience:

The current Attorney General (as well as at least the past three Attorneys General) has had significant legal, policy, administrative and management experience in both the public and private sectors. For example, he was elected to the King County Council and served for nine years where he was involved with the development of county policy and served in a leadership capacity on the budget, transportation and regional transit committees. He has been able to apply these experiences to the demands of the current job managing nearly 1,300 people (of whom over 500 are licensed attorneys), a nearly \$132 million annual budget, and an organizational structure covering 33 legal and administrative divisions or units.

c. Specialized (job content) knowledge and skills:

The practice of law has moved towards ever-greater attorney specialization. The Attorney General, in contrast, is required to continually learn areas of law outside of those in which he previously has practiced or studied, in order to speak fluently and persuasively with clients, jurists and policy makers on a wide array of legal issues. Core curriculum at law schools includes civil procedure, constitutional law, criminal law, contracts law, property law, tort law, legal writing and ethics. Many other legal topics, such as tax, are covered as electives. Attorneys General therefore possess a common core of legal knowledge. All have brought client, litigation and management skills developed through their specific practices, as well as expertise in

the public policy arena. For example, the current Attorney General practiced business and regulatory law at a major Seattle law firm for seven years.

5. **Nature and Scope**

This section should include a short and descriptive narrative that addresses the following requirements in the position:

a. Organization chart: **Attached**

- Size and role of this position and importance to state's mission and reputation. Diversity of job scope/responsibilities.

The Attorney General is the top legal officer for the state. There are over 230 state agencies, boards, commissions, colleges and universities, as well as the Governor and the Legislature, to whom the Attorney General, directly and through his staff, provides legal services.

At any given time, there are between 20,000 and 26,000 open or active cases being handled by the office. The scope of these cases ranges widely, from protecting workers and abused and neglected children to enforcing environmental laws, from imposing the death penalty to confining sexually violent predators, from prosecuting misconduct by licensed professionals to defending the termination of driver's licenses.

It is the responsibility of the Attorney General to hire, organize and oversee attorney and professional support staff to assure the provision of high-quality legal services to client agencies. The Attorney General and his assistants advance the state's ultimate mission to provide services to the public by representing agencies in all judicial and quasi-judicial forums, including appellate courts, and by providing preventive legal advice to avoid and reduce unnecessary and expensive litigation.

One formal part of this advice function involves preparation of Attorney General Opinions. These opinions, which are provided at the request of state officials and county prosecutors, have been given great weight by the courts because of the fairness and quality of legal research the office has provided over the years. It is the job of the Attorney General to ensure that opinions continue to reflect the best independent legal reasoning and thereby to provide public officials with sound advice on emerging public policy issues.

The Attorney General is responsible for a number of legislatively-created programs:

- The Consumer Protection and Antitrust programs which protect consumers and

legitimate businesses from fraud and unfair competition.

- **The Public Counsel program which represents the public in utility rate increase cases.**
- **The Medicaid Fraud Control program which investigates and prosecutes criminal abuse and neglect of Medicaid patients as well as complex, white collar fraud cases involving the Medicaid program.**
- **Investigation and prosecution of crimes at the request of the Governor and county prosecutors, as well as operation of a computerized criminal tracking unit that helps local law enforcement to investigate crimes, particularly homicides and sexual assaults. Civil commitments of sexually violent predators are also pursued.**
- **Our Counsel for the Environment advocates for the public in energy facility siting proceedings.**

b. Management environment.

- **Key challenges, sensitivities, risks, etc., inherent in the position and political environment.**
- **Any unique requirements associated with the performance of job responsibilities.**
- **Key interfaces.**

The management environment in which the Attorney General operates is significant in scope and includes, actually or potentially, every component of state, local and federal government, the business community, stakeholder groups, and the public at large. Typical interfaces with government include the Governor, the Legislature, all state agency directors and staff, other state elected officials, members of boards and commissions, the judiciary, local prosecutors, and members of the congressional delegation. Typical interfaces outside government include representatives of both small and corporate businesses, labor unions, advocacy groups and individual citizens.

This management environment uniquely impacts job responsibilities. The Attorney General is elected by the citizens to represent their legal interests. This presumes an independent duty and role in defining what those interests are. However, he also serves as statutory representative for state clients who have substantive expertise and who develop and implement policies with legal ramifications. He and his assistants, as licensed practitioners of the law, are subject to the Rules of Professional Conduct which prescribe various duties to one's client. This juxtaposition of duties often means that the Attorney General must balance and reconcile potentially competing legal interests.

The key challenge of the position is thus to exercise the independence of the role to define who the ultimate client is with respect to any given legal issue, and to represent the interests of that client accordingly. This is a delicate and sensitive task that must be carried out within a highly charged political environment. The further challenge is to manage a staff of nearly 1,300 employees located in 13 offices around the state in such a manner that they, too, carry out their responsibilities consistent with these unique duties.

c. Problem solving/decision making requirements.

This section should contain a brief statement(s) indicating the thinking required by the job for analyzing, evaluating, creating, reasoning, arriving at and making conclusion. Problem solving has two dimensions:

1. The thinking environment considers the degree of freedom to think and type of information that is processed in order to solve problems. Consideration is given to the scope and impact of policies, procedures, precedents, available standards/practices, and outcomes of decisions.
2. The thinking challenge considers the type (level and complexity) of thinking the job requires to make decisions in various job situations. Describe what situations/circumstances place the greatest mental demands on this position.

Problem solving measures the intensity of the mental process which employs know-how to (1) identify; (2) define; and (3) resolve a problem.

As chief legal officer, the Attorney General and his team of assistants represent the public in cases that have increased in volume and that have become increasingly complex over the years. These cases often have significant financial and social impacts on residents, taxpayers and consumers. For example, in 2005:

- **The Torts Division handled 387 cases in FY 2005 and resolved 65% with zero payouts.**
- **The Bankruptcy and Collection Unit, which pursues monies owed to the state for delinquent sales and business and occupation taxes, industrial insurance premiums and unemployment fund contributions; accrued benefits to the state of over \$8 million.**
- **The Social and Health Services Divisions protect children from abuse and neglect in dependency guardianships and termination actions. In 2005, these attorneys had more than 6,700 open dependency cases representing 11,300**

children.

- **The office successfully defended a challenge to the constitutionality of state law prohibiting child pornography.**
- **The Utilities and Transportation Division reached agreement with an energy company to conduct a large-scale review of tens of thousands of steel gas lines for corrosion across Western Washington. The Public Counsel Unit limited general rate requests for two major utilities by \$117 million.**
- **The Consumer Protection Division, in coordination with law enforcement, shut down a “diploma mill” that issued false diplomas to persons who used them to bolster their employment credentials and/or illegally obtain visas. The Consumer Protection Division also processed 20,000 complaints resulting in nearly \$6 million in restitution to consumers and 165 arbitrations resulting in \$4 million in refunds and vehicle replacements to Washington consumers. The Antitrust Division realized an additional \$19 million in benefits to Washington taxpayers.**
- **The Medicaid Fraud Control Unit brought in more than \$9 million in recoveries.**

The Attorney General must also provide leadership in addressing important, emerging legal issues. The focus of the Attorney General in 2005 and 2006 was to strengthen and tighten laws relating to public disclosure, spyware, methamphetamine, sexually violent predators, and state tort liability. In addition, the Attorney General is currently providing a leadership role on related or legal issues at both the state and national level. He has a continuing role as Co-Chair of the NAAG¹ Financial Practices Task Force which oversees the work of the Attorneys General on predatory lending practices. He is convener of the Pacific Northwest Precursor Chemicals Committee, a new three-state meth task force that is part of the National Meth Chemical Initiative and associated with the Office of National Drug Control Policy. The Attorney General is also overseeing three task forces (on law enforcement, victim services and public education) arising from a recent AGO-sponsored Identity Theft Summit. Finally, he is organizing two Latino Consumer Protection summits which will deal with unique consumer protection issues for Spanish speakers.

The Attorney General has an active practice before the Washington and U.S. Supreme Courts. In 2005, the office handled approximately 19 cases before the Washington State Supreme Court. The Attorney General personally reviews each case prior to oral argument. Topics of pending cases range from same-sex marriage to workplace ergonomics to the validity of the monorail motor vehicle excise tax. In

¹ NAAG is the National Associations of Attorneys General.

addition, over the last 12 years the office has argued an average of three cases every four years at the U.S. State Supreme Court and has participated as amicus curiae (friend of the court) in many others. In 2005, 30 amicus briefs were filed in the U.S. Supreme Court. All cases at this level have major financial or policy impacts on the state's citizens. For example, in June 2006, the Attorney General's Office will file a Petition for a Writ of Certiorari asking the United States Supreme Court to review the recent decision of the Washington Supreme Court in *State ex rel. Public Disclosure Commission v. Washington Education Association*. In that case the State Supreme Court ruled that an "opt-in" procedure, under which nonmembers must affirmatively authorize a union's use of their agency shop fees for political purposes, violates the First Amendment to the United States Constitution.

At times, the Attorney General personally handles cases that reach the Supreme Court level. For example, the Attorney General is currently scheduled to argue *Madison v. State of Washington* in the state Supreme Court. He will be defending the validity of the statutory felon disenfranchisement requirement that felons fully pay their legal financial obligations in order to have voting rights reinstated.

The preceding paragraphs describe the "thinking environment" required of the Attorney General. In all of the cases and legal issues identified above, which are only representative of those handled, the Attorney General was (or is) personally engaged in the analysis, reasoning, strategic-thinking and problem-solving required. In all cases he was required to apply his legal, policy or administrative training and experience. In all cases he was either personally responsible for making key strategic decisions or was closely involved in the decision making of one or more executive level assistants. He has complete discretion in this process to consider legal precedent, policy, practices and how they interrelate, as well as all possible impacts of decision-making.

The thinking for this job entails sophisticated legal reasoning, in-depth analysis of complicated legal and policy issues, creativity in problem-solving, and often the visionary ability to perceive and understand long-term, statewide impacts. The situations that likely involve the greatest intellectual demands are strategic decision-making on pending legal issues, involvement in the appellate cases and problem-solving in the public policy arena.

d. Accountability.

This section should contain a brief statement(s) indicating the answerability for an action and its consequences. It is the measured effect of the job on end results. It has two dimensions:

1. Freedom to Act – considers the degree of controls and limitation placed on the job's authority that are set by policies, procedures, precedents, and standard practices.

Washington Citizens' Commission on Salaries for Elected Officials

Official Position Description Form for Executive Branch Positions

Page 9

2. Job Impact – considers the type and degree of influence the job contributes to the end result:

- Primary Controlling impact on end results, where shared accountability or others is subordinate.
- Shared Participating equally with others (except own subordinates and superiors), within or outside organizational unit, in taking action.

The freedom to act in this position has been touched upon above. The Attorney General is ultimately accountable for all of the legal decisions made and actions taken by the office on behalf of and in his name. There is no shared accountability or consent to be obtained for decisions. As an elected official, he reports ultimately to the people of the state who make the final decision on his job performance. His latitude to act is constrained by this reality as well as, of course, the laws, precedents and legal systems under which we operate, and the checks and balances of government.²

The impact of the job of Attorney General is three-fold. The first impact is on the Office of the Attorney General itself through the exercise of management and application of policy to nearly 1,300 staff in 13 locations, as well as through management of the nearly \$132 million budget. It is one of the largest agencies among statewide elected officials, with over 500 exempt, professionally licensed employees. This presents unique challenges related to performance management and quality control. The second impact is upon state government through the intended goal of delivering high quality, professional legal services to state agency clients. The third impact is upon the citizens of the state. The latter occurs not only through the delivery of legal services to state agency clients who provide state services, but also to the public at large by virtue of criminal prosecution, sexually violent predator commitments, consumer protection, fraud and antitrust initiatives and recoveries, and recovery of funds owed to the public treasury.

Occasionally, these impacts are realized through joint efforts or actions with other Attorneys General around the country. For example, the Washington Attorney General is currently taking a lead role in working with other states to monitor and enforce recoveries under the Tobacco Master Settlement Agreement. Through 2005, the revenue from this agreement to Washington was over \$750 million.

e. Planning (Technical and Strategic).

- Focus on the requirement for and impact of planning on the state's mission and

² In fact, the independent role of the office itself has often been referred to as an additional check and balance on state government.

success of the agency.

Ninety percent of the office budget consists of appropriations to the legal services revolving fund for the provision of legal services to state agencies. Therefore, long range planning for the office is driven substantially by the long range plans of those state agencies. In addition, as mentioned above, the Attorney General fulfills a number of statutory responsibilities. These include enforcement of the Consumer Protection Act, conducting criminal prosecutions, recovering funds for the public in Medicaid fraud proceedings, protecting ratepayers before the Utilities and Transportation Commission, and serving as Counsel for the Environment in energy facility siting proceedings. Planning is necessary to predict, as much as possible, the future nature and scope of state legal problems so that resources can be sought and deployed timely and effectively.

Timely and effective deployment of legal resources will in turn support the ultimate success of the future initiatives, services and policies of state government. It is, therefore, critical for the Attorney General to incorporate into his planning such factors as the economy, demographics, changes in the practice of law and in the legal market, increased demand for accountability, service trends in state government, the evolution of technology, evolving application of federalism, and changing risk management and tort liability. By planning for the impact of these factors on the delivery of legal services, the Attorney General maximizes the success of the office, both as a critical component within state government and as the principal driver behind various statutory responsibilities and public policy initiatives.

6. **Recent Change(s) in this Position**

What significant changes have occurred in the job since its last review in 2003? Use the format outline to organize your comments.

The current Attorney General has significantly expanded his work and that of the Office in creating an elevated statewide profile with law enforcement. He has assumed the role of convener on a number of issues of importance to public safety, specifically, methamphetamine use, confinement of sexually violent predators, and criminal issues impacting consumers, such as identity theft and senior fraud. This heightened law enforcement role serves to bring police agencies, prosecutors, policy makers, consumer groups, this office and other stakeholders together to marshal resources and expertise and to jointly attack these serious public protection issues.

7. **General Comments**

Please discuss anything else that may contribute to the understanding of your job responsibilities.

Washington Citizens' Commission on Salaries for Elected Officials

Official Position Description Form for Executive Branch Positions

Page 11

Attached are informational copies of the Office's 2005 Annual Report that further highlights the breadth and scope of the work of the Attorney General.

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